



Inaugural TIO

Warwick Smith, former Liberal MP and Shadow Minister for Communications, has been appointed as the first Telecommunications Industry Ombudsman (TIO).

Smith, who lost his seat in the February election, was widely regarded as having performed well in his shadow portfolio, within the limits of Coalition policy. For example, he was obliged to support the controversial policy of cutting \$50m from the ABC budget, a policy which he has conceded to be in recent interviews, as ill-advised.

Welcoming the appointment, the Australian Federation of Consumer Organisations (AFCO) said Smith had a 'history of appreciation of the public interest aspects of communications issues', and that AFCO looked forward to the TIO providing 'fair, accessible and effective redress' for consumer telecommunications complaints.

Smith, a lawyer, was elected to the House of Representatives in 1984, and held shadow portfolios for Aboriginal Affairs, Privatisation and Science and Energy as well as Communications.

comply with an ombudsman scheme. Details of the scheme's structure, which is largely modelled on the Banking Industry Ombudsman, its jurisdiction and operations were developed in consultations between carriers, service providers, consumer and user organisations.

The TIO Office is being established under a recently incorporated company, TIO Limited. Board Chairman is Ross Ramsay of Optus Communications, and Jim Holmes of Telecom is Company Secretary.

While TIO Limited is ultimately responsible for the scheme, an independent Council under the chairmanship of the Hon Lionel Bowen AC (who has also chaired the Advertising Standards Council) will oversee its operations and management. The six other Council members are three industry representatives (one each for Telecom, Optus and Vodafone) and three consumer/user representatives.



The Ombudsman's office is to be located in Melbourne. Smith's first task will be to select the support staff and office systems necessary to carry out its functions. TIO Council Chair Bowen expects it will take a further three months before the office is fully established.

In the interim, complaints can still be taken to the Commonwealth Ombudsman or to AUSTEL. □

Background to the TIO

The TIO and his staff will mediate or arbitrate consumer complaints and disputes with the licensed carriers (Telecom, Optus and Vodafone).

The impetus for establishing a TIO scheme came from recommendations of the 1991 Parliamentary Inquiry into Telecom's handling of customer complaints. The recommendations concentrated largely on improvements to Telecom's handling of complaints, but also recognised the need for independent mediation in the form of a Telecommunications Industry Ombudsman to handle complaints not settled to customer satisfaction.

Following those recommendations, the Government set a licence condition for all carriers to enter into and

The Litigation Begins

Of the various disputes between Optus and Telecom in the past few months, only one has gone on to litigation. The matter concerns the legality of Telecom's Flexiplans under the price discrimination provisions of the Telecommunications Act 1991.

The combined effect of s.183-185 and s.27 of the Act is to allow a carrier to make 'reasonable allowance' in its tariffs for differences arising out of costs for the supply of particular services. These differences must, however, arise from a set of factors enumerated in s.185. These involve the different quantities in which the service is supplied, different transmission quality or capacity, different destinations and different supply periods. The Act prohibits any price-discrimination which cannot be justified on the basis of these cost-based criteria. The major question before the Federal Court is whether Telecom's Flexiplans are legal under the Act.

Telecom has also commenced actions in the Victorian Supreme Court and the Federal Court over AUSTEL's ruling on Telecom's dominance in the mobile market. Is this the beginning of a telecommunications lawyer led recovery? □

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